

Exhibit No. 11

SB187 is a constitutional referendum to let the people decide –

Should we limit legislative district population variances to  $\pm 1\%$ , ~~except where necessary for~~ compliance with the federal voting rights act?

Date 1/14/09  
Bill No. SB 187

I'm asking members on both sides of the aisle to take off their partisan glasses and look at this referendum from the perspective of Montana's future. While abuses of the system may have been perpetrated by both political parties in the past, none of us knows which political party will control the redistricting commission in future decades. So please don't view this bill from the perspective of the most recent redistricting cycle, but rather look prospectively into the future, and what is best for Montana and Montanans.

In prior years, this was of course a hot political potato because of redistricting and attempts were made to apply 1% variances retroactively to undo the work of the redistricting commission. It became a divisive partisan issue for obvious reasons. But now that the dust has settled and we're living with the results, I think we need to seriously re-visit the issue without the partisan divisiveness.

Why should we pass this referendum? Here are my top 10 reasons:

- 1) The Montana Constitution mandates it. Article 5 Section 14 – "All districts shall be as nearly equal in size as is practical." With modern computer technology,  $\pm 5\%$  does not meet that constitutional mandate.
- 2) It clearly is very practically do-able. I had a lengthy conversation saturday with our non-partisan legislative services expert. She's received national recognition for her redistricting work. I guess we'll call her "She who shall not be named", since our legal counsel is "He who shall not be named." Here's what she says "Yes, absolutely the plus/minus 1% variance is easily do-able; we already have the technical capability to do it." She added that the proof is evident in the fact that federal law mandates congressional districts at plus/minus 0% variance. Moreover, the evidence from the last redistricting plan proves we can peg a 1% variance. They pegged many Repub districts between plus 4 and plus 5 (which is a 1% variance) and most Dem districts between minus 4 and minus 5 (a 1% variance).
- 3) The federal constitution mandates it – one person. One vote. Current law permits one person, 9/10ths of a vote. If you're unlucky enough to be stuck in a district that is 5% over average; your vote only counts 90% of that for a person who lives in a district that is 5% under average. And this is true whether you're a Democrat, Republican, Native American, or whatever. Please recognize that fact. This should no longer be a partisan issue. We're violating the 14<sup>th</sup> amendment (equal protection), and the Georgia case proves it irrefutably.
- 4) It's a fairness issue. Why should people in Jim Shockley's district be represented by 10% less of a Senator than people in Sen. Tropila's district?
- 5) The 10% variance is exacerbated over 10 years' time due to growth patterns. Sales, Shockley, Balyeat. 1,2,3. By the end of the last 10 year cycle, we had districts which were between 2 and 3 times as large as some inner city districts. If anything, the suburban districts should've been under-populated, not over-populated. I recently received unsolicited email correspondence from a statistician who pointed out this same thing. [distribute Connor letter]
- 6) If we don't fix this, It will increasingly undermine the credibility of MT state government. We have a voluntary income tax system. Some taxpayers and citizens are now left questioning why they should obey Montana's laws and voluntarily pay their hard earned tax dollars over to a government which has little more legitimacy than a third-world tinhorn dictator's mock "democracy". Voter fraud is one of those things that very quickly undermines the credibility of government.
- 7) It thwarts the will of the people – the voters of Montana. If 18,000 to 20,000 more voters statewide vote to have one party control the legislature, and yet, because of population manipulation and abuse, another party ends up controlling the legislature, the people's will is not only being resisted, but flat out flipped backwards.
- 8) The Senate already passed this provision statutorily in 2003. And it wasn't a party line vote. Unfortunately, court decisions have left that law in limbo because it was merely statutory and not a constitutional change.

- 9) It allows for broader variation where necessary in Native American districts. None of us here would want to in any way jeopardize those 6 or 7 Native American districts; and this legislation clearly states that this rule would not apply to those districts.
- 10) The 4 legally allowed purpose for population variances are: 1) to deal with geographic barriers, 2) political subdivision boundaries, 3) communities of common interest, and 4) variations necessary in specific districts (such as Native American districts) to comply with the federal voting rights act. Last time, the 5% variance was used for an illegitimate purpose – partisan political gain; rather than for those 3 legit purposes. If we don't change this law, if we let the next commission do the same thing; I will predict right now there will be a federal lawsuit based on the federal Constitution's equal protection clause and federal Voting Rights Act. This will be before a federal judge rather than some handpicked Montana judges, and it will be thrown out. Federal case law is clear -- They threw out Georgia's plan last time, based upon the exact same issues I've outlined regarding MT's plan. Do we want MT to suffer that national embarrassment?
- 11) This is my last and far and away the biggest reason. Changing the variance to  $\pm 1\%$  will remove most of the partisan bickering from the redistricting process. The first rule of economics is "Incentives matter". If we remove most of the incentive to engage in population-based gerrymandering, it will no longer be a partisan football. Under current law, when you can gain as many as 5 House seats and 2 or 3 Senate seats simply through manipulation of district population sizes, it can potentially change control of the entire legislature. But if we let the people pass this amendment, population gerrymandering would then only gain you a potential of one single House seat. It will no longer be worth all the political dog-fighting for one lousy House seat.

Those who framed the MT constitution had an earnest desire that redistricting not be a partisan fight. By passing this referendum, we will give Montanans the chance to vote on a real solution to remove the partisanship from the process.

Finally, Mr. Chairman, members of this committee, I'm asking you to pay no attention to the man behind the curtain. In my correspondence you'll note that I talk about the mastermind behind the '04 redistricting scheme. Last time I presented this bill in 05, he stood as an opponent, and making statements regarding the 04 process that just weren't true. That the population discrepancies were just random variations, which had nothing to do with partisan voting patterns. That the  $\pm 5\%$  allowance had been used for the 4 legitimate purposes, and not partisan gain. After his testimony, some of you may recall that I said I could prove he wasn't right. I said if he were right, you'd have a normal bell shaped curve – random distribution of population variances. Unfortunately I didn't have it charted then. Now I do. Look at the data. This isn't random variation, this isn't coincidence. This is raw, undemocratic, partisan, no conscience; and in my mind unconstitutional abuse of the people's vote.

In the interests of a short hearing, I'm going to stop right there. I'll ask you to review the correspondence with Mr. Connor to elicit some questions. I'd love someone to ask me a question later about the difference between traditional gerrymandering and population gerrymandering.